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DOI: 10.46793/LawPG.155S

THE CONTEMPORARY PENAL POPULISM: THE GLOBAL TRENDS AND THE LOCAL CONSEQUENCES

Abstract

The penal populism as a special approach to shaping the social reaction to crime has a global character and has been present for a few decades already. The global social changes connected with the appearance and strengthening of the neoliberal socio-economic system, contributed to its appearance together with the role of the media, the changes of the appearing perception of the crime and the politization of crime. The basic characteristics refer to the establishment of new strategies of crime control, significant criminal-legal expansionism, more severe penal policy, the strengthening and expansion of the formal control, new penology. The most important consequence of the new criminal control practice is a great increase in the number of convicts with the prison penalty, which cannot be explained solely by the increase in crime. Since apart from the global character of the relevant social changes, the penal populism with its controversial consequences has not overtaken all the countries with the same intensity, a special attention is drawn by the countries which have kept the functional criminal-legal system out of the new punitiveness. The relevant research show that the level of punitiveness is in a significantly stronger correlation with economic policy, i.e. investments into the social policy, than with the real state of crime. The local reception of the global trends, both generally and in the criminal legislation system of Serbia, is characterized by inconsistency and neglect of the institutional and cultural incompatibility and the standardisation of the hybrid law institutes which have a great difficulty of fitting into the national legal systems.

Key words: *penal policy, public perception of crime, crime emotionalisation, new penology, the crime populism.*

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1. INTRODUCTION

The penal populism marks the populist approach¹ to the problem of the formal social crime control. The causes as well as the consequences of the penal populism are of the global character. The expansion and strengthening of the crime-populistic approach was marked in mid-eighties, whereas during the 90es the crime populism becomes recognizable on the global level, only to influence significantly almost all the segments of the social reaction to crime in the following period. The penal populism is closely connected with the public perception of the high crime endangerment and the visible fear of crime, parallel to the perception of the police as inefficient, and the courts as slow and unjustifiably mild. The populist political option uses all that in order to achieve their political goals, competing with their opponents concerning the severity of the response to crime.²

A few decades of prominent penal populism have significantly transformed the system of the social reaction to crime.³ The globalistic character blurs to an extent the real scales of these processes, so it seems as if

¹ The populism, generally, refers to the policy „familiar to the people“, which in order to achieve their aims emotionally instrumentalizes the fears of the people, their discontent, the current and temporary conflicts, insists on instincts and simple solutions, and strives or claims it strives, to work in the interest of the broadest walks of life, i.e. people, as opposed to the remote, alienated and uninterested social elite. As a rule, the target group of populism are the layers of the society which feel neglected in the existing political and economic system. By the media campaigns, good organization and deft use of the legal instruments the existing fears and insecurities are strengthened, the calls for change are sent and simple solutions are offered for the socially complex situations, populists, no matter to which area the activity is pointed to, emphasizes „being close to people“, different from the alienated economic, political and professional elites, insist on the simple „common sense approach“ to the question in stead of the „unproductive“ expert analysis. They criticize their opponents by the well-prepared and catchy expressions and slogans „which the simple people understand“, they talk about what masses want to hear. Their highly affective statements deepen the existing conflicts and misunderstandings, they stir emotionally a great number of supporters and often achieve a high level of the national cohesion in respect of the certain matters. By gaining power and real influence, as a rule, they try to above all „put under control“ the legal system and public media and decides for popular, but in the long run unsustainable and harmful measures (T. Meyer, *Populismus und Medien*, in: *Populismus* (Hrsg. F. Decker), Wiesbaden, 2006, 81-89).

² J. Pratt, *Penal Populism*, London-New York, 2007, 14.

³ S. Soković, *Savremene globalne tendencije u kontroli kriminaliteta (karakteristike, perspektive i osort na domaće prilike)*, *Crimen*, (II), 2/2011, 212-226:

everything does not happen here and now, but in some other spaces and in an undefined time. Facing the consequences of the globalistic changes happens as a rule when a certain practice has stabilized and is kept alive parallelly with the ambiguity surrounding its usefulness and theoretical-conceptual groundedness.⁴ The consequences of the penal populism can be seen both in the ultimately dissonant contemporary penological-theoretical concepts, and in the increase in the prison population and putting under some kind of control, a great number of citizens, through alternative measures of non-imprisonment or the measures of preventive control, independent from the real state of crime.

2. THE GLOBAL CAUSES

2.1. The Global socio-economic and cultural changes

The development of the penal populism correlates with the broader socio-economic changes, above all with the global tendency of rejecting the model of the social wealth and the reduction of assets spent from the state budget. The prominent advantage of the market economy over the social policy makes the constant social insecurity, whereas new technologies simultaneously bring about the visible and everyday physical insecurity in all segments of life.⁵ Modern society is becoming the society of risk⁶, and the security becomes a fetish of modern age. The general social and physical insecurity becomes ontological, generates both the personal and emotional instability, alienation and identity crisis.⁷ Furthermore, we cannot count on the safe system programs of state help because the direct state control in many services important for everyday life of citizens is missing or is extremely weak. The privatisation of public services or establishing of the public-private partnerships reduce the costs of the state, but do not reduce its responsibility. In the areas which are not under the direct control of the state the responsibility becomes significantly fragmented, no entity has the full competence, and thus not full responsibility.

⁴ E. Gidens, *Sociologija*, Beograd, 2007, 71.

⁵ A. Giddens, *The consequences of Modernity*, London, 1990, 7; K. S. Williams, *Textbook on Criminology*, Oxford, 2008, 585.

⁶ E. Gidens, *op. cit.*, 73.

⁷ F. van Marie, Sh. Maruna, „Ontological insecurity" and „terror management": Linking two free-floating anxieties, *Punishment & Society*, 12/1, 2010, 17-26.

In the social sense, the result of adapting to the transformations of the modern society is making the so called control culture.⁸ The crime loses the character of exquisiteness and becomes a normal phenomenon, the risk which is counted on in everyday life. It is expected that every citizen adapts his / her behaviour and thus to a great extent avoids the risk of the criminal victimization. The causes of the criminal behaviour are not sought after, rather it is strived for the control of crime with the least possible expenses. The system of the formal control of crime does not strive for the rehabilitation and re-integration of offenders, but is grounded on the risk management of the future criminal behaviour, above all through the control and locking up the offenders. The most important characteristics of the new model of social reaction to the crime are: the loss of the rehabilitation idea; the strengthening of the demand for more efficient application of law and strict punishment; „the return to the victim“; the politization of crime and the new populism; the importance of the public safety; the come back of the belief in imprisoning the offenders; the transformation of the criminological attitudes towards crime into the understanding of crime a normal, routine, inseparable activity of the modern society which should be controlled, and not suppressed; the expansion of the prevention, safety and security idea; the strengthening of the role of the private sector in crime control and safety maintenance; the acceptance of the idea about „the crisis of the character“. Moreover, the emotionally burdened states of insecurity, the bitterness and anger suppress the expert analysis of the state of crime and the rationally perceived humanity in the form of the formal reaction to crime.⁹

2.2. The Role of the Media

With the help of the informational technologies the mass media make it possible for the contemporary society to have an unimaginable level of interconnectedness and interactivity and as a fact create a special world information order, and re-shape a great number of information, based on which we function in everyday life. The weakening of the internal cohesion of the modern social communities influences the fact that the majority of necessary information is not acquired in the immediate communication, but by distant and abstract sources.

⁸ D. Garland, R. Sparks, *Criminology, Social Theory and the Challenge of our Times*, British Journal of Criminology, 40(2), 2000, 189-204.

⁹ D. Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society*, British Journal of Criminology, 36(4), 1996, 445-71.

At the same time „the media imperialism is stronger and stronger“¹⁰, the ownership over the media is more and more concentrated in the hands of big media conglomerates, and the media companies operate outside of the national state borders. The advantage in the media reporting is given to the contents which provide higher viewer ratings and bigger sale, because the income of the commercialized media depends on the commercials. The participation of the citizens in the public activities is weaker and weaker, and at the same time their understanding of the matters important for the public is being reduced. The consequence of that is „the entertainment culture“¹¹, simultaneous glamourisation and simplification of the contents of media reporting, the triumph of entertaining programmes and „famous“ people at the expense of the controversial matters, debates and expert analyses. The crime becomes a great media topic, as it attracts the public. At the end of 90es the crime reporting took up over 20% of the media reporting, when compared to the modest 4% in the period from after-the-war till the 70es, and one should bear in mind the scope of qualitative and quantitative increase in the overall media space.¹² The reporting about the crime has as an aim to, not only inform, but to entertain. Instead of that the expert discussions of the competent individuals based on the valid data, and the crime is discussed in public in the style of sensational tabloid rethoric, in episodes, through highly personalized single cases.¹³ The level of sensitivity of the public to the crime problems is raised by the special interest in violence, sexul felons, juvenile crime¹⁴, recidivists and antisocial behaviour, as the most obvious form of endangerment,¹⁵ with the simultaneous sensationalistic compassion and moral identification with the victims.¹⁶ The

¹⁰ E. Gidens, *op. cit.*, 483.

¹¹ *Ibid*, 485.

¹² J. Ditton, J., Daffy, *Bias in the newspaper reporting of crime news*, British Journal of Criminology, 23(2), 1983, 159-165.

¹³ Reiner, R, *Media Made Criminality: The representation of Crime in the Mass Media*, The Oxford Handbook of Criminology, Oxford, 1997, 199.

¹⁴ S. Soković, *Maloletnički kriminalitet i recidivizam: pravilo i/ili izuzetak*, Revija za kriminologiju i krivično pravo, 51(3), 2013, 23-37.

¹⁵ L. Mikieli, *Jedno nasilnije društvo? Društveno istorijska analiza interpersonalnih nasilja u Francuskoj od 1970. godine do danas, I deo*, Anali Pravnog fakulteta u Beogradu, 1/2008, 26-48; L. Mikieli, *Jedno nasilnije društvo? Društveno istorijska analiza interpersonalnih nasilja u Francuskoj od 1970. godine do danas, II deo*, Anali Pravnog fakulteta u Beogradu, 2/2008, 5-24; M. Filipović, *Evolucija nasilja: pokušaj racionalizacije ideoloških diskursa*, u: Istraživanja u specijalnoj pedagogiji (ur. D. Radovanović), Beograd, 2009, 195-211.

¹⁶ J. Pratt, *op. cit.*, 71.

emphatic affective-emotional approach with the broader message about the deterioration of moral values provides a great attention of the audience, but at the same time generates fear of crime and creates a picture about the violence and lawlessness which threatens to encompass the whole society, about the crime epidemics, in front of which the inefficient police and the mild and complacent courts are powerless.

2.3. The Public Perception of Crime

In the society full of risk and insecurity the perception of the crime is the result of the presentation of the crime by the media and does not show the real state of affairs. The real crime is surpassed by the myths about the crime which is spread by the media,¹⁷ and the crime does not represent only the possibility to cause the damage of the property and individual injuries, but also the materialized confirmation of the deterioration of the social and moral norms, the disintegration of the civil order and the moral cohesion of the society. The emotional crime is subject to unobjective estimation, dramatisation and exaggeration, and thus the critical approach was replaced by the emotional impulses of anger and rage.¹⁸ The Fear of crime¹⁹ and the crime risk victimisation evasion²⁰ are in the contemporary society almost institutionalized, because they influence where we live and how we live („safe suburbs“, „defendible space“, the safety as the necessary factor of urban planning, the security alarms, interphones, video surveillance, avoiding the risky locations, and similar). The citizens are expected to behave rationally and to avoid risks, and the crime prevention becomes more and more the responsibility of „the active citizen“, and less of the state structures.²¹ Thus an important part of general and permanent insecurity,

¹⁷ Đ. Ignjatović, *Kriminologija*, Beograd, 2010, 139.

¹⁸ S. Monterosso, *Punitive Criminal Justice and Policy in Contemporary Society*, Queensland University of Technology Law and Justice Journal, 9/2009, 13-25.

¹⁹ It is well known that the application of the quantitative approach solely in studying fear from crime overrates the real state, because of which the implications of such research on the political decisions are utterly dubious. See: H. Kury, G. Woesner, A. Lichtblau and A. Neumaier, *Fear of Crime as Background of Penal Politics? Policing in Central and Eastern Europe*, in: *Dilemmas of Contemporary Criminal Justice* (eds. G. Mesko, M. Pagon, B. Dobovsek), Maribor, 2004, 126-133.

²⁰ It is important to note that the risk arises and is present in the social interaction, and that as such it is prone to the objective estimation, dramatization and exaggeration.

²¹ D. Garland, „*Governability and the problem of Crime: Foucault, Criminology, Sociology*, *Theoretical Criminology*, 1(2), 1997, 173-214; J. Loader, *Fall of Platonic Guardians*,

uncertainty and endangerment of citizens in the contemporary society of risks is connected to the state of criminality / crime and inadequate social reaction to crime.

2.4. The Crime Politization

The state of „the moral panic“, significantly created and constantly fed by the enormously powerful media, demands an adequate response, i.e. ever more severe punishment, due to which there is a turn in the public policy priorities.

The security problem and „the ever growing crime“ become the main subject of the political campaigns, from local to the presidential ones,²² and the criminal-legal system of response to crime becomes the source of the internal politics.

The politicians „get even with“ crime by advocating the reform of the penal legislation and much more severe punishment policy „which will stop the violence and lawlessness which threatens the society“. The advocating of more severe punishment („three strikes and you are out“) and punishing for the smallest violations of law („the zero tolerance“ of crime) in the time of general insecurity gets the favourable view of the public, provides political support and satisfies the conservative nostalgia for the classical retributivism²³ expressed above all with the wealthy ones and thus very powerful groups of the society. When once reached, this desire of the public is insatiable, and the very practice of severe punishment starts a life of its own, and keeps being alive for a long time due to completely different reasons when compared to the ones why it came about in the first place.²⁴

Liberalism, Criminology and Political Responses to Crime in England and Wales, *British Journal of Criminology*, 46(4), 2000, 561-586.

²² The placing of the question of control of crime in the center of the political campaign can have serious consequences for the outcome of the campaign as well as for the criminal legislation. The decision of the not so popular governor of California in 1993 to revitalize his campaign by advocating more severe penal policy, resulted in the political support but also imposing the law which introduces the principle „three strikes and you are out“, and in a specially restrictive form („two strikes“), not for the most serious crime, and without parole. J. Pratt, *op. cit.*, 90.

²³ C. Shearing, *Punishment and Changing Face of the Governance*, *Punishment & Society*, 3/2, 2001, 203-220.

²⁴ D. Garland, *Epilog: The New Iron Cage*, *Punishment & Society*, 3(1), 2001, 197-199; D. A. Green, *Feeding Wolves: Punitiveness and Culture*, *European Journal of Criminology*, 6(6), 2009, 517-436.

3. THE GLOBAL CHARACTERISTICS

3.1. The New Strategies of Crime Control

The populist approach to crime problems suppresses the strategies which essentially deal with the causes of crime (poverty, inequality, unemployment) and gives advantage to the measures and techniques which are relatively simply introduced and applied, and work as a means of calming down the citizens and create the impression decisive actions are taken against crime.²⁵ Although certain results cannot be denied, the success of these measures is short-term, directed only to certain segments of the society and often leads to dislocation of criminal activities to other areas. Contemporary states do not guarantee security to their citizens, the activities of the state policy are directed towards the control of insecurity and risk,²⁶ and in reality are most often visible through the realization of measures from the context of the strategies for the situation prevention, risk removal strategies and risk management strategies.²⁷

The situational prevention shifts the focus of prevention from the perpetrator to the physical locations where the criminal acts are committed. It is directed to the „criminal situation“ and endeavours to remove, neutralize or replace the outside, physical factors which contribute to carrying out the decision to commit a crime, or to preclude their group acting, which as such makes it easier to the motivated criminal committing of future crimes. The situational prevention does not influence the criminal affinities and motives of the perpetrator, but understands them as realistically given.²⁸

The risk removal strategy is based on the approach that criminals should get what they deserve due to the fact that they committed a crime, without turning to other factors of individual crime etymology and stipulates the application of the prison punishment, the control of the perpetrators by the use of electronic surveillance, the application of medicament therapies in order to control the behaviour and similar measures. The treatment of the convicts entails the severity and discipline.

The strategy of risk management and risk reduction in its foundation represents a special way of prevention acting with the aim of making the citizens responsible to a greater extent for their own security and their own

²⁵ S. Soković, *Kazneni populizam: uzroci, odlike i posledice*, u: *Kaznena politika: zakon i praksa* (ur. S. Bejatović), Beograd, 2013, 185-232.

²⁶ E. Gidens, *op. cit.*, 231.

²⁷ S. Williams, *Textbook on Criminology*, Oxford, 2008, 595.

²⁸ S. P. Laub, *Crime prevention, Approaches, Practices and Evaluations*, 2004, 39.

assets. The surveillance of movement which often represents a breach to privacy and the application of different programmes with the aim of developing the patterns of behaviour recognizable from the point of view of security should reduce the risk of victimization. The control of the behaviour does not include the estimation of the moral-ethical aspect, every behaviour which corresponds to the safety standards is allowed.

3.2. The Criminal-legal expansionism

The contemporary criminal-legal model follows (or is preceded by!) also the economic analysis of crime and the economic rationality, as well as the criminological control theories which consider the criminal act as a purposeful choice considering the circumstances (the theory of the rational choice, the theory of the routine activity). The intensive legislative activity leads to piling up of laws which should fulfill above all the political expectations, which are more declarative than reformatory, and to a great extent represent the decisiveness and engagement of the government, and to a much lesser extent the way to solve the real problems.

In the context of the cultural control and the new model of the social reaction to crime the criminal-legal system should keep the security of the society because the reason for the criminal-legal reactions becomes more and more the danger, and less and less the committed crime.²⁹ The contemporary criminal law is globally characterized by the introduction of the new criminal acts and from the delator criminal activities and the criminal activities of threatening / endangerment, the prohibition of the risky activities without the concretization of the risk,³⁰ the stipulation of the punishment for the finished criminal activity for the activities which actually represent the remote preparatory activities, the departing from some basic principles, the weakening of the principle ultima ratio, the multiplication of incriminations in the areas in which the existing ones are not applied (organized crime, terrorism, corruption, the international criminal activities).³¹ The overemphasized preventive orientation of the criminal legislation, which has mostly arisen as the consequence of the pressure by the media and politicians, strengthens actually the retributive characteristics of

²⁹ Z. Stojanović, *Preventivna funkcija krivičnog prava*, Crimen (II), 2011/1, 3-26.

³⁰ M. Bock, *Über die Positive Spezialprävention in den Zeiten des Feindstrafrechts*, u: Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, IV deo (ur. Đ. Ignjatović), Beograd, 9-32.

³¹ C. Roxin, *Besitzdelikte*, u: Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, II deo (ur. Đ. Ignjatović), Beograd, 2010, 9-25.

the criminal legislation / law.³² The criminal-legal prevention in the contemporary law becomes in a sense limited by nothing, as different from the criminal-legal retribution which contains the self-limiting mechanism (proportionality as the repression measure). The self-limiting mechanism of criminal-legal prevention could only be success achieved in the suppression of crime, but the standpoint that the aim justifies the means, allows for the significant measure of retribution.³³

3.3. The Penal Policy

The populist penal policy has a global character and arises as the product of the interaction between the media „cultural entertainment“ and the social-globalistic „control culture.“ Advocating the viewpoint that „the punishment is the best prevention“, the politicians severely criticize the mild penal policy of the courts and advocate more severe punishments of the offenders and the more comprehensive and consistent application of the imprisonment punishment. The starting point about the mild penal policy of courts is based on the generalization of individual cases by the media, and not on the documented expert analysis of the relevant data. At the same time, the prosecution and courts are requested to raise the level of efficiency and the decision making „in the real time“, all of which is followed by the political and media pressure in terms of the modernization and rationalization. The penal sanctions are made more severe, for a greater number of criminal acts it is threatened by the longer prison sentences, the longer sentences in prison become the obligatory choice of the court for the recidivists, and the possibilities for parole for recidivists are narrowed to a greater extent. The severe and swift punishment is followed by publicly pointing out to the offenders by using the strategy of „naming and shaming“. ³⁴ The basic message of the populist penal policy is that the political structures have gained control of the threatening endangerments and that they are capable of disciplining „those“ who threaten. Foremost reliance on the punishment and sentencing leads also to the ideology „we and they“, i.e. we and they who endanger us as threatening outcasts, strangers,

³² Z. Stojanović, *Krivičnopravni ekspanzionizam i zakonodavstvo Srbije*, u: Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, IV deo (ur. Đ. Ignjatović), Beograd, 2010, 32-49.

³³ Z. Stojanović, *Preventivna funkcija krivičnog prava*, Crimen (II), 2011/1, 3-26.

³⁴ J. Pratt, *op. cit.*, 126; J. Yates, „Naming and shaming“: *Antisocial Behaviour Policy in England and Wales*; u: Istraživanja u specijalnoj pedagogiji (ur. D. Radovanović), Beograd, 2009. 195-211.

and those from who we must be protected.³⁵ These opinions additionally strengthen the existing economic and social marginalisations and secondary increase in the intensity of the social reaction to the breaking of the law.³⁶

3.4. Alternative Measures and „the Prolonged Formal Control“

The populist approach to punishment opens the phenomenon the „bifurcation strategies or the double track strategy“ which, paradoxically, leads to the simultaneous strengthening of mildness and severity in punishing and introduces the broader circle of citizens into the systems of the formal social control. The broader application of alternative measures for the not so severe crimes should reduce the prison population, reduce the costs of the imprisonment system, raise the efficiency of the social re-integration and reduce the come back rate³⁷. However, the cancellation of the alternative measure by which the sentence is suspended under certain circumstances, very often leads the pplication of the longer punishment than the one which would have been stated right away without the application of the alternative which ultimately relativizes the bifurcal balancing and leads to the generally more repressive approach, both in respect of more serious crimes and in the case of less serious crimes.³⁸ The application of the non-institutional measures is followed by the so called „effect of spreading the net“, i.e. the phenomenon that the alternative sanctions and measures take more citizens under some kind of social control, than it is the case without the application of the alternative programmes. The bipolarity in the contemporary penal policy is the consequence of the conceptual dychotomy of the contemporary penal-theoretical standpoints, which include the non conservative retributivism and the neoliberal pragmatism.³⁹

The system of the formal social control expands more and more to other anti-social behaviour which is not penal-legal sanctioned.⁴⁰ A specific type of

³⁵ D. Garland, *Criminology, Social Theory and the Challenge of our Times*, British Journal of Criminology, 40, 2000, 189-204.

³⁶ S. Hallsworth, *Rethinking the Punitive Turn: Economies of Excess and Criminology of the Other*, Punishment & Society, 2/2, 2000, 145-160.

³⁷ A. Worrall, *Punishment in the community*, London, 1997, 99; S. Soković, *Alternativne krivične sankcije i mere i prevencija kriminaliteta*, u: Kazneno zakonodavstvo i prevencija kriminaliteta (ur. L. Kron), Beograd, 2008, 347-365.

³⁸ J. Pratt, *op. cit.*, 92.

³⁹ P. O' Malley, *Volatile and Contradictory Punishment*, Theoretical Criminology, 3(2), 1999, 175-196.

⁴⁰ J. Pratt, *op. cit.*, 118.

the social control is the so called prolonged formal control. As the general characteristic of the contemporary societies, this type of control is the consequence of the application of the new technological achievements with the aim of reducing the consequences of the state of general insecurity. Because of the real or imagined danger, the supervision of almost all the public indoor spaces and many outdoor spaces is common today.⁴¹ In the meantime, this type of control becomes to the greatest extent a separate system, and industrial which is kept and maintained by strengthening the very insecurity it was built to reduce.

3.5. The New Penalty

The mutual influence of the law and economy⁴² in the penological phase of the social reaction to crime can be seen in the concept of the „new penalty“. The new penalty includes the financial and quantitative effects as the primary ones, i.e. the maintenance of the control,⁴³ and its task is to manage the delinquency, and not to rehabilitate the offenders, to „normalize“ the crime, not to eliminate it. It primarily deals with the identification, classification and management of the offender groups classified according to the level of risk of their behaviour when compared with the normed order, and only peripherally with the problems of the diagnosis and treatment of the individual offender.⁴⁴ The penological interventions are based on the risk principle, the principle of the criminogenous needs of the offenders, the principle of responsiveness. Namely, the risk principle is of key value for singling out the offender who should undergo the treatment; the principle of criminogenous needs points to the circumstances to which the intervention should be directed, whereas the estimation of responsiveness should be responsible for the way

⁴¹ J. Farrell, K. Hayward, Y. Young, *Cultural Criminology*, London, 2008, 98.

⁴² B. Begović, *Ekonomska teorija generalne prevencije: osnovna pitanja*; u Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, IV deo (ur. Đ. Ignjatović), Beograd, 2010, 126-141.

⁴³ J. F. Cauchie, G. Chantraine, *Use of Risk in the Government of Crime, New prudentialism and New Penology, Champ penal/penal field*, Nouvelle revue internationale de criminologie, 2005/II, 409-433.

⁴⁴ G. Robinson, *Risk Management and Rehabilitation in the Probation Service: Collision and Collusion*, The Howard Journal, 38(4); 1999, 421; S. Soković, *Nova penologija – karakteristike i perspektive*, Pravni život, 9/2011, 823-836; S. Soković, *Nova rehabilitacija: konceptualni i praktični problemi*, Revija za kriminologiju i krivično pravo, 52(3), 2014, 9-19.

in which the complete effect of the treatment should be achieved.⁴⁵ The intensity of the treatment is based by the new penology on the estimation of the risk of the offender.

In the circumstances of the emphasized need to reduce the public expenses, the popularity of the new penology is based on the fact that its goals are more easily evaluated and presented, as well as on the fact that it points to the practitioners clear and realistic directions for the achievement of goals set up by the official crime policy within the scope of the available resources, which completely fits the general populist approach to the crime contro.

4. THE GLOBAL CONSEQUENCES AND PERSPECTIVES

The most important consequence of the new practice of crime control is a great increase in the number of the sentenced to imprisonment, which can be explained only by the rise in the crime rate.⁴⁶ Apart from that, it is important to note that, by placing them under some kind of control, through alternative measures of non-imprisonment or through the measures of preventive control, a big number of citizens is covered. In the period between 1997-2007 the accessible statistics show that the rise of the prison population of 60-70% in the countries on all the continents, the overcrowdedness of prisons was in 2007 in about 60% of the countries which is double the number of the available capacities, and in over 20% of the countries it is over 150% of the available capacities.⁴⁷ A special attention is drawn by the case of USA with the prescribed number (quota) of prisoners of 743, when compared to the total number od prisoners which is 2 292 133 in 2009.⁴⁸ In 2007 USA had less than 5% of the total world population but also 23,4% of the total world prison population.⁴⁹ The newer data shows that over 78% of countries still marks the

⁴⁵ D. A. Andrews, J. Bonta, R. Hoge, *Clasification for Effective Rehabilitation: Rediscovering Psychology*, *Criminal Justice and Behavior*, 17(1), 1990, 19-52.

⁴⁶ S. Soković, *Stanje u zatvorima u 21. veku: uzroci i efekti visoke inkarcerizacije*, u: *Usklađivanje pravnog sistema Srbije sa standardima Evropske unije*, knj. 1 (ur. B. Vlašković), Kragujevac, 2013, 101-116.

⁴⁷ R. Walmsley, *Trends in World prison population*, 8th ed. International Center for prison Studies, London, 2008, 1-15.

⁴⁸ F. E. Zimring, *Imprisonment Rates and the New Politics of Criminal Punishment*, *Punishment & Society*, 3(1), 2001, 161-166; D. Garland, *The Meaning of Mass Imprisonment*, *Punishment & Society*, 3(1), 2005, 5-7.

⁴⁹ For the sake of compariosn in the same period the quota for the imprisoned individulas in Russia is 628, Germany 88, France 96, Australia 133, England and Wales 157, New

rise in the prison population and that the number of convicts rises on all the continents except Europe.⁵⁰

As opposed to the USA, the arise of the model „of the social state“ in Europe does not have such severe consequences.⁵¹ The overcrowded prisons and the rise of the convicted population „torment“ the European countries also, but to a lesser extent.⁵² The risk trends in the European countries refer to a great number of foreigners and ethnic minority members who are imprisoned, who, according to some estimations can represent a bigger problem than the hyperincarceration of the Afro- and Hispano- Americans into the USA. The Scandinavian countries with the prescribed number (quota) over ten times less than the one in the USA,⁵³ attract attention as an exception in reference to the global trend and confirm at the same time the connection of the neo-liberal models of economic policy and the penal punitivism. The relevant research show that the level of punitivism is in the significantly stronger correlation with economic policy, i.e. the investment into the social policy, than to the real state of the crime and that the different types of political-economic structures lead to smaller or bigger populism in sentencing and different practical realization of respect of the human rights and human dignity.⁵⁴ The rise in the crime rate does not directly lead rise in

Zealand 203, The Netherlands 94, Norway 71, Serbia 143, Slovenia 65. R. Walmsey, *World prison Population List*, London, 2008, 1-15.

⁵⁰ R. Walmsley, *World prison Population List*, 11th ed, International Center for prison Studies, London, 2015, 15.

⁵¹ D. Dowenes, *The macho penal economy: Mass Incarceration in the United States - A European Perspective*, *Punishment & Society*, 3(1), 2001, 61-80.

⁵² M. Tonry, *Why Aren't German Penal Policies harsher and Imprisonment rates Higher?* *German Law Journal*, 5(1), 2004, 1187-1206.

⁵³ J. Pratt, *Scandinavian Exceptionalism in an Era of Penal Excess, Part I: The Nature and Roots of Scandinavian Exceptionalism*, *British Journal of Criminology*, 48(2), 2008, 119-137; J. Pratt, *Scandinavian Exceptionalism in an Era of Penal Excess, Part II: Does Scandinavian Exceptionalism Have a Future?*, *British Journal of Criminology*, 48(3), 2008, 275-292.

⁵⁴ The study of twelve countries: USA, England, Wales, Australia, New Zealand, South Africa, Germany, the Netherlands, France, Italy, Sweden, Finland and Japan frthe point of view of the political economy system divided into four groups: the neoliberal, conservative-corporate, that the political-economic system is in a significant connection with the tendencies in the penal policy. The highest level of punitivism and the highest prescribed number of the sentenced individuals mark the neo-liberal systems, is followed by the conservative-corporate countries, whereas the Nordic social democratic societies and Japan, as oriental-corporate countries have much lower number of convicts to the prison lev and significantly lower level of new-punitivism. Cavadino, J. Digan, *Penal Policy and Political Economy*; *Criminology & Crminal Justice*; 6(4); 2006, 435-456;

the prescribed number of individuals sentenced to the prison sentence, rather the rise in the number of individuals sentenced to the prison sentence is in a significant manner, the consequence of the political and strategic decisions in the field of crime control.⁵⁵ In its essence, the penal policy is the result of the political choice.⁵⁶ The Scandinavian countries have the lowest rate of imprisoned individuals, but the biggest investment into the social policy, and apart from that also the highest level of public trust and political legitimacy, as well as the lowest level of the fear of the crime.⁵⁷

The penal populism itself, observed in the long run, has one important inner self-limitation, which is imposed by its populist character. The measures of the penal populism require important material-financial expenses and in cases when the penal populism starts to charge citizens for its expenses in terms of lower investment into schools, hospitals and similar, because of the investment into prisons, the public support to the populist measures and the political will drop significantly.⁵⁸

5. THE LOCAL CONSEQUENCES

The acceptance of the global trends in the local circumstances is almost inevitable, no matter how far it may seem at the first glance, independent from the expert estimations and analyses and is accelerated with time. The local variations which follow the global trends with the reception which is most often characterized by inconsistency and the neglect of the institutional and cultural incompatibility, The National crime control systems are formed with the transfer of ideas, strategies and practice, most often from the Anglo-American legal space, and the penal populism comes into the national legislations and the practice firstly as symptom of the global trend and then

⁵⁵ M. Tonry, *Why Aren't German Penal Policies harsher and Imprisonment rates Higher?*, *German Law Journal*, 5(1), 2004, 1187-1206.

⁵⁶ J. Pratt, *Penal Populism*, London, 2007, 153.

⁵⁷ The high level of trust and legitimacy is in the positive correlation with the social investment and the level of social equality, but not with the severe penal policy. Behind these correlations there is a mechanism by which the extensive social policy influences the severity of punishment. Thus the solidarity and the division of responsibility for the causes of everything which presents the social risk is developed, including crime, and enables material prosperity and economic security, due to which the tolerance and empathy is expressed more easily. S. Snacken, *Resisting Punitiveness in Europe?*, *Theoretical Criminology*, 14(3), 2010, 273-292.

⁵⁸ J. Pratt, *op. cit.*, 151.

escalates and gets an active form.⁵⁹ The positive potential of globalization in the sense of modernization and experience exchange based on the verified results, surpasses the negative consequences of accepting the global trends.

The reckless reception of the global trends, socially and institutionally unfounded, value-wise and culturally incompatible, is not the right answer to the real needs of reformation and modernising the national systems of crime control. In the field of the practical application of the implemented solutions, the problems are quickly noticeable, because of which in the ultimate outcome the effects of the application of the global trends as a rule are of the negative accumulative character because they add up the existing the existing (local) problems, which should be eradicated with the newly created implementation problems. The global order thus becomes the potential for the local chaos.

The acceptance of the global trend in the national penal-legal systems raises many questions, especially important for the transition countries, bearing in mind that the transition is essentially the means of globalization of the capital as well as the accompanying social trends.⁶⁰ As the global economic-social trends come from the Anglo-American area, the transition countries are mostly not either geographically or nor culturally located in the same area, so the implementation of the global trends in the transition countries is complex and necessarily requires significant adaptations and the socio-cultural validation.⁶¹ Unfortunately, the well thought out and adapted implementation is missing most often in the transition countries. Pressed by the realistic need for the reform and improvement of their legal systems in the circumstances of the transitional instability, these countries exactly are the ones which easily fall into the spiral of the media-political manipulations and imposed false perceptions, the non-critical adoption of ready-made solutions which additionally deepen the instability and the social-economic crisis. The reception of the global trends is especially delicate in respect to the penal-legal systems, taking into consideration their legitimacy and justifies the sensitive balance of the guarantee and the protection function, the provision of the efficiency with the simultaneous complete protection of rights.⁶²

⁵⁹ G. Meško, *Prenos kriminalitetnih politik – sodobne kulture odzivanja na kriminaliteto in vloga kriminologov v procesih oblikovanja nadzorstvenih politik*, *Revija za kriminalistiko in kriminologijo*, 59(1), 2008, 31-38.

⁶⁰ Z. Vidojević, *Kuda vodi globalizacija?*, Beograd, 2005, 162.

⁶¹ L. Breneselović, *Recepcija „restorative pravde“ kao primer nekritičkog diskursa u pravnoj sociologiji*, *Sociološki pregled*, XLV(1), 2011, 45-66.

⁶² D. Zolo, *Sumrak demokratije u eri globalizacije*, *Crimen*, 2/2012, 142.

The global march of the penal populism hit Serbia as well. The realistic need for the modernization of the domestic criminal-legal system and the necessity of harmonizing with the relevant international standards can partly be argument for the frequent changes in the criminal legislation, but does not justify the higher severity of other penal policy and the expansion of the criminal-legal repression.⁶³ The material criminal legislation in the past decade is characterized by frequent changes, the introduction of the new incriminations and the expansion of the existing ones, the prescription of the severe punishment, the change of the classical institutes opposed to the basic principles (as in the case of the prohibition to commute a sentence for certain criminal acts), making the conditions for the applications of some institutes more strict (parole).⁶⁴ The accompanying laws (The law on seizing the property which was obtained as the result of the criminal act,⁶⁵ The Law on the responsibility of the legal entities for the criminal acts,⁶⁶ The Law on the special measures for the prevention of committing the criminal acts against the sexual freedom towards the minors⁶⁷) follow the global trends and introduce the hybrid institutes, which significantly deviate from the ground principles and are applied in practice with difficulty.⁶⁸ The process legislation marks numerous changes in the same period also, the postponing of the application, partial application. Although the intention of the new codex about the criminal procedure⁶⁹ was for the criminal procedure to be made

⁶³ S. Soković, *Izvršenje krivičnih sankcija - mogućnosti i perspektive*, u: *Kriminal i državna reakcija : fenomenologija, mogućnosti, perspektive* (ur. L. Kron, B. Knežić), Beograd, 2011, 311-325.

⁶⁴ Z. Stojanović, *Krivičnopravni ekspanzionizam i zakonodavstvo Srbije*, u: *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, IV deo* (ur. Đ. Ignjatović), Beograd, 2010, 32-40; B. Ristivojević, *Negativna kriminalno-politička kretanja u materijalnom krivičnom zakonodavstvu Srbije od donošenja KZ: temeljno opredeljenje zakonodavca ili incident*, *Crimen* (III), 2/2012, 170-191; S. Soković, *Uslovni otpust: penološki aspekt*, u: *Krivične i prekršajne sankcije i mere: izricanje, izvršenje i uslovni otpust* (ur. I. Stevanović, A. Batričević), Beograd, 2016, 387-400.

⁶⁵ Sl. glasnik RS, 32/2013.

⁶⁶ Sl. glasnik RS, 97/2008.

⁶⁷ Sl. glasnik RS, 32/2013.

⁶⁸ Z. Stojanović, *Krivično pravo u doba krize*, *Branič*, 1-2/2011; 27-49; B. Ristivojević, *Punitivni populizam srpskog zakonodavca – kritička analiza tzv. Marijinog zakona*, u: *Nova rešenja u kaznenom zakonodavstvu i njihova praktična primena* (ur. S. Bejatović), Beograd, 2013, 319-399; S. Soković, *Žrtve i kaznena politika – upotreba žrtve u savremenoj kontroli kriminaliteta*, u: *Usklađivanje pravnog sistema Srbije sa standardima Evropske unije*, knj. 3. (ur. S. Đorđević), Kragujevac, 2015, 173-185.

⁶⁹ Sl.glasnik RS, 55/2014.

more efficient, and above all faster, the newly created hybrid process system made of classical institutes and the new aversial ones typical for the Anglo-American legal space which are difficult to bind together, was criticised as opposed to the constitution in its key provisions, conceptually inconsistent and contradictory, practically very difficult to apply.⁷⁰ Executive crime legislation, faced with the rise of the prison population and the overcrowded prison capacities (which are the consequence of the punitive wave in the material and process legislation), in its base norms the concept of the new penology and introduces the risk estimation as the basic penological postulate,⁷¹ which is further followed by laws⁷² and regulations⁷³ in greater detail implements the concrete models. Summarizing the judicial practice in respect of decision making about the parole based on the risk estimation, shows that the concept of the risk estimation is strange and unclear to the domestic courts, because of which they accept with difficulty the fact that only the quantitative risk expression based on which the categorization into a certain risk category is sufficient ground for an individual decision.⁷⁴

6. CONCLUSION

The penal populism as a special approach to shaping the social reaction to crime has a global character and has been present for a few decades already. The global social changes connected with the appearance and strengthening of the neoliberal socio-economic system, contributed to its appearance together with the role of the media, the changes of the appearing perception of the crime and the politization of crime. The basic characteristics refer to the establishment of new strategies of crime control, significant

⁷⁰ M. Škulić, *Novi zakonik o krivičnom postupku – očekivanja od primene*, u: *Nova rešenja u kaznenom zakonodavstvu i njihova praktična primena* (ur. S. Bejatović), Beograd, 2013, 33-69; S. Bejatović, *Kaznena politika i reforma krivično procesnog zakonodavca (doslednost ili ne)*, u: *Krivično zakonodavstvo de lege lata et de lege ferenda* (ur. S. Bejatović), 2015, 7-36.

⁷¹ Sl. glasnik RS, 55/2014.

⁷² Zakon o probaciji u izvršenju vanzavodskih sankcija i mera, Sl. glasnik RS, 55/2014.

⁷³ Pravilnik o tretmanu, programu postupanja, razvrstavanju i naknadnom razvrstavanju osuđenih lica, Sl. glasnik RS, 66/2015.

⁷⁴ M. Alimpić, *Uslovni otpust u praksi suda sa područja Novosadske Apelacije*, u: *Krivične i prekršajne sankcije i mere: izricanje, izvršenje i uslovni otpust* (ur. I. Stevanović, A. Batrićević), Beograd, 2015, 417; D. Damjanović, *Uslovni otpust u praksi suda sa područja Kragujevačke Apelacije*, u: *Krivične i prekršajne sankcije i mere: izricanje, izvršenje i uslovni otpust* (ur. I. Stevanović, A. Batrićević), Institut za kriminološka i sociološka istraživanja, Beograd, 2015, 407.

criminal-legal expansionism, more severe penal policy, the strengthening and expansion of the formal control, new penaology. The most important consequence of the new criminal control practice is a great increase in the number of convicts with the prison penalty, which cannot be explained solely by the increase in crime. Since apart from the global character of the relevant social changes, the penal populism with its controversial consequences has not overtaken all the countries with the same intensity, a special attention is drawn by the countries which have kept the functional criminal-legal system out of the new punitiveness. The relevant research show that the level of punitiveness is in a significantly stronger correlation with economic policy, i.e. investments into the social policy, than with the real state of crime. The local reception of the global trends, both generally and in the criminal legislation system of Serbia, is characterized by inconsistency and neglect of the institutional and cultural incompatibility and the standardisation of thy hybrid law institutes which have a great difficulty of fitting into the national legal systems.

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